

**BAC 7710-FW-P**

**POSTAL REGULATORY COMMISSION**

**39 CFR Part 3035**

**[Docket No. RM2018-12; Order No. 4973]**

**Amendments to Market Test Rules**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting final rules amending the Commission's regulations governing market tests of experimental products. The final rules revise the method for calculating applicable market test revenue limitations and clarify the process for filing a request to add a non-experimental product or price category based on an experimental product to the market dominant or competitive product list. For additional information, Order No. 4973 can be accessed electronically through the Commission's Web site at <https://www.prc.gov>.

**DATES:** *Effective:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

- I. Relevant Statutory Requirements
- II. Basis and Purpose of Rule Change
- III. Final Rule

### **I. Relevant Statutory Requirements**

Section 3641 of title 39 of the United States Code authorizes the Postal Service to conduct market tests of experimental products. 39 U.S.C. 3641. Generally, each product offered by the Postal Service must comply with section 3622 (governing market dominant products) or section 3633 (governing competitive products), as well as section 3642 (governing changes to the lists of market dominant and competitive products) and applicable regulations. Experimental products, however, are not subject to these requirements. 39 U.S.C. 3641(a)(2).

The Postal Service may decide to add a non-experimental product or price category to the product list based on its performance or other factors. Accordingly, the regulations in this part set forth procedures for filing a request to add a current or former experimental product to the market dominant or competitive product list in non-experimental status, that is—subject to the applicable requirements of sections 3622 or 3633, 3642, and the applicable regulations promulgated thereunder.<sup>1</sup>

---

<sup>1</sup> See Docket No. RM2013-5, Order Adopting Final Rules for Market Tests of Experimental Products, August 28, 2014, at 24 (Order No. 2173).

In accordance with its specific authority to regulate market tests under section 3641 and its general authority under section 503 to promulgate regulations and establish procedures, the Commission initiated a rulemaking proceeding to consider amendments to the existing market test regulations that would better reflect current practice and improve transparency and accountability.

## **II. Basis and Purpose of Rule Change**

The final rules amend existing market test rules in 39 CFR part 3035 in two areas. First, the final rules revise the method for calculating applicable revenue limitations for market tests appearing in §§ 3035.15 and 3035.16 to be consistent with the current level of precision used in calculating the annual limitation on the percentage change in rates for market dominant products (price cap). Second, the final rules clarify the process under § 3035.18 for filing a request to add a non-experimental product or price category based on an experimental product to the market dominant or competitive product list. The final rules also emphasize the necessity of receiving specific detailed information in such requests.

## **III. Final Rule**

The final rules amend existing §§ 3035.15, 3035.16, and 3035.18. The final rules replace “214.5” with “214.463” in existing § 3035.15(d) and (e) as well as § 3035.16(c) and (d). The final rules change the heading of existing § 3035.18 to “Request to add a non-experimental product or price category based on an experimental product to the product list.” Final § 3035.18(a) replaces the

word “permanent” in existing § 3035.18 with general language about adding a non-experimental product or price category based on an experimental product to the market dominant or competitive product list. Final § 3035.18(b) identifies instances when the Postal Service must file a request compliant with § 3035.18. Final § 3035.18(c) lists the information that the Postal Service must include in a request to add a non-experimental product or price category based on an experimental product to the market dominant or competitive product list.

Final § 3035.18(d) contains separate notice requirements for a request filed under § 3035.18 that seeks to continue services provided under a market test immediately when the market test ends. Final § 3035.18(d) also specifies a different advance notice requirement for competitive NSAs (45 days) as compared to other products (60 days).

Existing § 3035.18(c) is moved to final § 3035.18(e), but replaces the phrase “its request to make an experimental product permanent” with “a request filed under this section” and adds “if the market test proceeding’s docket is an active case before the Commission” at the end of the first sentence.

#### **List of Subjects in 39 CFR Part 3035**

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission amends 39 CFR part 3035 as follows:

### **PART 3035—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS**

1. The authority citation for part 3035 is revised to read as follows:

**Authority:** 39 U.S.C. 503; 3641.

2. Amend § 3035.15 by revising paragraphs (d) and (e) to read as follows:

**§ 3035.15 Dollar amount limitation.**

\* \* \* \* \*

(d) The calculation of the \$10 Million Adjusted Limitation involves the following steps. First, a simple average CPI-U index was calculated for fiscal year 2008 by summing the monthly CPI-U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.463. Then, a second simple average CPI-U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI-U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying \$10,000,000 by the Recent Average divided by 214.463. The result is expressed as a number, rounded to the nearest dollar.

(e) The formula for calculating the \$10 Million Adjusted Limitation is as follows:  $\$10,000,000 \text{ Adjusted Limitation} = \$10,000,000 * (\text{Recent Average} / 214.463)$ .

3. Amend § 3035.16 by revising paragraphs (c) and (d) to read as follows:

**§ 3035.16 Exemption from dollar amount limitation.**

\* \* \* \* \*

(c) The calculation of the \$50 Million Adjusted Limitation involves the following steps. First, a simple average CPI-U index was calculated for fiscal

year 2008 by summing the monthly CPI-U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.463. Then, a second simple average CPI-U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI-U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying \$50,000,000 by the Recent Average divided by 214.463. The result is expressed as a number, rounded to the nearest dollar.

(d) The formula for calculating the \$50 Million Adjusted Limitation is as follows:  $\$50 \text{ Million Adjusted Limitation} = \$50,000,000 * (\text{Recent Average} / 214.463)$ .

\* \* \* \* \*

4. Revise § 3035.18 to read as follows:

**§ 3035.18 Request to add a non-experimental product or price category based on an experimental product to the product list.**

(a) If the Postal Service seeks to add a non-experimental product or price category based on a former or current experimental product to the market dominant or competitive product list, the Postal Service shall file a request, pursuant to 39 U.S.C. 3642 and part 3020, subpart B of this chapter, to add a non-experimental product or price category to the applicable product list.

(b) The Postal Service shall comply with the requirements specified in paragraphs (c) through (e) of this section of this section if the proposed non-experimental product or price category:

(1) Offers the same (or similar) service as a former or current experimental product;

(2) Has the same distinct cost or market characteristic as a former or current experimental product; or

(3) Uses (or is based on) data or assumptions from a former or current market test proceeding.

(c) A request filed under this section shall:

(1) Identify the market test and docket number that the proposed non-experimental product or price category is based on;

(2) Explain the relationship between the proposed non-experimental product or price category and market test or experimental product;

(3) Identify any assumptions from the market test that the request uses or is based on;

(4) Include all data from data collection reports filed during the market test in the financial model supporting the request, or separately identify and explain any differences between the data collection reports filed during the market test and the data used in the financial model supporting the request; and

(5) Quantify the product specific costs associated with the development of the market test; that is, costs incurred before the market test was implemented.

(d) The Postal Service must provide advance notice of a request filed under this section.

(1)(i) The requirements in this paragraph (d)(1) apply if the Postal Service seeks to add a non-experimental product or price category based on an

experimental product to the competitive product list as an NSA. If the Postal Service seeks to continue the services provided under a market test immediately when the market test ends with no interruption in service, the Postal Service must file a request under this section at least 45 days before:

(A) The market test expires (including any extension period granted); or

(B) The market test is expected to exceed any authorized limitation specified in §§ 3035.15 and 3035.16 during any fiscal year, whichever is earlier.

(ii) In all other instances, the Postal Service must file a request under this section at least 45 days before the requested date for the Commission's decision.

(2)(i) The requirements in this paragraph (d)(2) apply if the Postal Service seeks to add a non-experimental product or price category based on an experimental product to the market dominant or competitive product list as a product other than a competitive NSA. If the Postal Service seeks to continue the services provided under a market test immediately when the market test ends with no interruption in service, the Postal Service must file a request under this section at least 60 days before:

(A) The market test expires (including any extension period granted); or

(B) The market test is expected to exceed any authorized limitation specified in §§ 3035.15 and 3035.16 during any fiscal year, whichever is earlier.

(ii) In all other instances, the Postal Service must file a request under this section at least 60 days before the requested date for the Commission's decision.



(e) The Postal Service shall also file a notice of a request filed under this section in the market test proceeding's docket if the market test proceeding's docket is an active case before the Commission. This notice shall include the applicable docket number(s) for the proceeding evaluating the request.

By the Commission.

**Stacy L. Ruble,**

*Secretary.*

[FR Doc. 2019-00398 Filed: 1/31/2019 8:45 am; Publication Date: 2/1/2019]